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Paper No. 7

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**APR 04 2002**

**OFFICE OF PETITIONS**

In re Application of :  
Savoie & Boulay :  
Application No. 09/838,560 : DECISION REFUSING STATUS  
Filed: 20 April, 2001 : UNDER 37 CFR 1.47(a)  
Attorney Docket No. 12971-1US-1-RE :

This is in response to the petition filed under 37 CFR 1.47(a) on 23 November, 2001.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

**FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.**

Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified reissue application was filed on 20 April, 2001 without an executed oath or declaration. On 22 May, 2001, a Notice to File Missing Parts of Reissue Application was mailed, requiring the statutory basic filing fee, additional claim fee(s), and a surcharge for their late filing. In response, on 23 November, 2001, the present petition was filed, accompanied by a request for a three (3) month extension of time, the filing fees, surcharge, petition fee, and a reissue declaration naming

Paul-André Roland Savoie and André Eric Boulay as joint inventors and signed by joint inventor Boulay on behalf of himself and joint inventor Savoie.

Petitioners assert that joint inventor Savoie has refused to sign the reissue declaration.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a surcharge of \$130 or \$65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and

(5) a statement of the last known address of the non-signing inventor.

The petition lacks item (1). In regards to item (1), petitioners have not submitted sufficient evidence to prove that a copy of the application (specification, including claims, drawings, if any, and the declaration) was sent or given to the non-signing inventor. Although the various declarations included with the petition state that several individuals contacted Mr. Savoie regarding the application, none of the declarations state that a copy of the application was ever sent or given to him.

Petitioners must show proof that a copy of the application (specification including claims, drawings, if any, and the Declaration) were sent or given to the non-signing inventor for review.<sup>1</sup> Petitioners should provide a copy of the cover letter transmitting the application papers to the non-signing inventor or details given in an affidavit or declaration of facts by a person having first hand knowledge of the details.

Petitioners must also present proof that the non-signing inventor refuses to sign the declaration *after* being sent or given a copy of the application papers. If there is a written refusal, a copy of the written refusal should be submitted with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts.

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<sup>1</sup>MPEP 409.03(d).

Petitioners are advised that although a request for a (3)-month extension of the time for reply to the Notice to File Missing Parts was submitted, a four (4) month extension of time was required to make the reply filed on 23 November, 2001,<sup>2</sup> a timely response to the Notice mailed on 22 May, 2001, which set a two (2) month shortened period for reply. In accordance with the authorization on the transmittal sheet filed with the present petition, counsel's deposit account, No. 19-5113, has been charged the additional \$260.00 required for a four (4) month extension of time.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents  
Box DAC  
Washington, D.C. 20231

By FAX: (703) 308-6916  
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23  
2201 S. Clark Place  
Arlington, VA

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.

  
Douglas I. Wood  
Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

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<sup>2</sup>Since 22 November, 2001, fell on a federal holiday, the response received on 23 November, 2001, was timely with a four (4) month extension of time, as noted infra.